THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No. 21676 of 2005

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Dated:05.10.2005

Between:

Smt.Ampili Seethamma, W/o.Ampili Kesanna,
R/o.Bothadasingi Gram Panchayat, L.N.Peta, Srikakulam District.

..... PETITIONER

AND

The District Panchayat Officer, Srikakulam, and another.

.....RESPONDENTS

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.21676 of 2005

ORDER:

The petitioner is Sarpanch of Bothada Singi Gram Panchayat, L.N.Peta Mandal of Srikakulam District. Aggrieved by the proceedings of the first respondent, dated 16.07.2005, the petitioner filed the instant writ petition seeking the writ of Mandamus declaring the same as arbitrary and illegal. He also seeks a consequential direction to the respondents to forthwith restore the powers to the petitioner to draw the funds of the Panchayat.

The petitioner was elected as Sarpanch of the Gram Panchayat in August 2001. The first respondent issued a show cause notice calling upon the petitioner to submit explanation within ten days with regard to the allegations of misuse of panchayat funds, and pending consideration of such explanation, the petitioner was prohibited from drawing the funds of panchayat and pending further action, the Extension Officer, Panchayat Raj, was conferred with cheque drawing powers. The petitioner

submitted one explanation on 01.08.2005 and another explanation on 01.09.2005 denying all the allegations, which are still pending.

The learned counsel for the petitioner, Sri.A.Venkata Ramana, submits that all the allegations made in the impugned order are not true. The petitioner submitted necessary material to show that no funds were misused and it is only the Panchayat Secretary, who used to prepare necessary cheques and obtained signatures of the petitioner. He secondly submits that as per Rule 42 of the Rules relating to taxes & lodging of moneys received by Gram Panchayat (promulgated vide G.O.Ms.No.30, dated 20.01.1995) (hereinafter referred to as 'the Rules'), there cannot be suspension of the powers of the Sarpanch to draw the funds indefinitely. According to the learned Counsel, such powers can be prohibited only for such period as may be specified in the order. The learned Assistant Government Pleader for Panchayat Raj refutes these contentions.

It is no doubt true that sub-Rule (1) of Rule 42 of the Rules enables the District Panchayat Officer to prohibit the Sarpanch from drawing moneys for Gram Panchayat for such period as may be specified. However, under second proviso to sub-Rule (1) of Rule 42 of the Rules, it is competent to the District Panchayat Officer to issue interim direction to the Sarpanch not to draw the money for Gram Panchayat pending the exercise of such power under Sub-Rule. The first proviso to Rule 42 (1) of the Rules requires the District Panchayat Officer to give an opportunity of making representation to the Sarpanch before passing an order under Rule 42(1) of the Rules. Reading sub-Rule (1) of Rule 42 of the Rules with two provisos, it becomes clear that till a show cause notice is served and explanation to such show cause notice is considered, it is permissible for the District Panchayat Officer to pass an interim order. If a show cause notice is issued and the power of the Sarpanch to draw moneys is suspended pending consideration of explanation to such show cause notice, that itself is a sufficient indication that the interim suspension is valid till a final order is passed under Rule 42(1) of the Rules. There is no necessity to specifically indicate time again. In this case, admittedly, while issuing show cause notice, the power of the petitioner to draw the funds is temporarily suspended. This submission is therefore, misconceived.

The petitioner has already submitted explanations on 01.08.2005 and 01.09.2005, after receiving show cause notice/order, dated 16.07.2005. Therefore, instead of keeping the matter pending, the first respondent is directed to dispose of the matter by considering the two explanations/representations submitted by the petitioner. This exercise may be completed within a period of ten days from the date of receipt of a copy of this order. Except to that extent, no further relief can be granted to the petitioner.

The writ petition, with the above observation, is accordingly disposed of. No costs.

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(V.V.S.RAO, J)

05.10.2005

vs